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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT	PAPER NUMBER
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3749

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/902,904
Filing Date: July 11, 2001
Appellants: DUNN ET AL.

John L. Knoble

For Appellant

EXAMINER'S ANSWER

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This is in response to the appeal brief filed May 23, 2006 appealing from the Office action mailed November 22, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

An appeal brief has been filed for related reissue application 09/902,965.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2,472,028	SON	5-1949
CH 685,919	FOLINI	11-1995
US 5,492,237	CHANG	2-1996
US 2,979,900	FOX	3-1959

non-published reissue US patent application 09/902,965 which is a reissue of US patent application 09/513,094 which has matured into US patent number 6,125,548 issued in October 2003.

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. That claim contains the recitation "such as" which renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Examiner will interpret the considered indefinite features in light of the prior art under the assumption that each feature might not be indefinite.

Claim Rejections - 35 USC § 102

Claims 2, 4-7, 9, 22-26, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Slipp et al. (GB 160,098). Examiner interprets the specified and/or claimed disc and disk to be patentably interchangeable, since nothing in the record shows that both uses of those terms are patentably distinct. Slipp is considered to disclose the claimed invention comprising:

a tray **a** & **b** having a bottom face that is adapted to be supported by an underlying surface such as a counter-top and an upper face as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

a plurality of pegs **c** or **d** extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10, and

wherein each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said pegs are mounted to said tray in such a manner that no standing water may collect at a point where a peg is mounted, thereby minimizing potential for mold and bacterial growth as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows water from domestic articles is considered to anticipate the claimed tray mounted peg where no standing water collects at a peg

mounted point minimizing mold/bacteria growth potential because both allow article drying by configuring pegs mounted away from any standing water; or alternatively:

a tray **a** & **b** having a bottom face that is adapted to be supported by an underlying surface and an upper face as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

a plurality of pegs **c** or **d** extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10, and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes and wherein said pegs are mounted to said tray in such a manner as to be movable only about a single axis of rotation and wherein said apparatus further comprises means for imparting lateral stability to said pegs, further deterring any motion other than about a single axis of rotation as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said single axis motion for lateral stability as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which

allows upward or downward peg rotation along a pivot point because both allow single axis peg rotation; or alternatively:

a tray **a** & **b** having a bottom face that is adapted to be supported by an underlying surface and an upper face as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

a plurality of pegs **c** or **d** extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10,

disk holding means **c** or **d** or **e**, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect (wherein any of the disclosed surfaces shown above the tray of Slipp function as a disk holding means since all are connected directly or indirectly to the upper tray face and can be used for holding baby bottle disks in a location isolated from a tray liquid collection location); and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28

and on the second page lines 21-26 and wherein said pegs are mounted to said tray in such a manner to allow packaging and storage as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows water from domestic articles is considered to anticipate the claimed tray mounted peg can be folded for the claimed intended use of packaging and storage because both allow article drying by configuring pegs upward for drying use and downward for packaging and/or storage; or alternatively:

a tray **a** & **b** having a bottom face that is adapted to be supported by an underlying surface and an upper portion as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

a plurality of pegs **c** or **d** extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support a baby bottle as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10,

mounting means for mounting said pegs to said tray so that said pegs are movable while mounted to said tray between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said

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pegs are mounted to said tray in such a manner to allow packaging and storage as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows water from domestic articles is considered to anticipate the claimed tray mounted peg can be folded for the claimed intended use of packaging and storage because both allow article drying by configuring pegs upward for drying use and downward for packaging and/or storage; and

frictional means connected to said pegs for frictionally engaging said upper portion of said tray wherein said pegs are moved between said first storage position and said second operative position as inherently disclosed on the second page lines 17-20 since the claimed frictional means for language is not discussed in the specification in sufficient detail but one skilled in the art would be able to make and/or use the claimed frictional means, based on the disclosed center of gravity because contact between two surfaces with an axle connecting engagement thereby allowing a frictional means for the claimed intended use. Slipp is also considered to disclose the claimed means for imparting lateral stability to said pegs comprises at least one axle joining adjacent pegs together for common, ganged movement about a common axis of rotation as shown in figures 2-4, location means for locking said axle in a rotational position that corresponds to said second operative position as expressly disclosed on page 1 lines 35-40, and location means comprises means, connected to said axle, for frictional engaging said upper surface of said tray as inherently disclosed on the second page lines 17-20 since the claimed frictional means for language is not discussed in the specification in sufficient detail and wherein one skilled in the art would be able to make and/or use the

claimed means for, based on the disclosed center of gravity because contact between two surfaces will axle connecting engagement thereby allowing a frictional means for the claimed intended use.

Claims 19-20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Son (US 2,472,028).

Claim Rejections - 35 USC § 103

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slipp in view of Son. Slipp is considered to disclose the claimed invention, as rejected above, except for the claimed upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member. Son, another apparatus for storing an article, is considered to disclose an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member in column 2 lines 30-35. It would have been obvious to one skilled in the art to combine the teachings of Slipp with the upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member, considered expressly disclosed in Son, for the purpose of providing a supporting a disk portion of a baby bottle.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slipp in view of Folini (CH 685,919). Slipp is considered to disclose the claimed invention, as rejected above, except for the claimed plurality of ring support members that are constructed and arranged to support a ring portion of a baby bottle. Folini, another apparatus for storing an article, is considered to disclose a plurality of ring support

members **34** that are constructed and arranged to support a ring portion of a baby bottle at the fourth and sixth paragraphs of the third translated page of that reference and as shown in figures 1 and 2. It would have been obvious to one skilled in the art to combine the teachings of Slipp with the plurality of ring support members that are constructed and arranged to support a ring portion of a baby bottle, considered expressly disclosed in Folini, for the purpose of providing a supporting a ring portion of a baby bottle.

Claims 12-17 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slipp in view of Folini in further view of Chang (US 5,492,237) (or just Slipp in view of Chang with respect to claims 27-28). Slipp in view of Folini (or just Slipp with respect to claims 27-28) is considered to disclose the claimed invention, as rejected above, except for the claimed stop member ring support mount imparting lateral stability including locking means with or without a cam stop member. Chang, another apparatus for storing an article, is considered to disclose a stop member ring support mount imparting lateral stability including locking means with or without a cam stop member at column 3 line 66 through column 4 line 34. It would have been obvious to one skilled in the art to combine the teachings of Slipp in view of Folini (or just Slipp with respect to claims 27-28) with the stop member ring support mount imparting lateral stability including locking means with or without a cam stop member, considered expressly disclosed in Chang, for the purpose of providing a supporting an article.

Claims 18, 21, and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slipp in view of Fox (US 2,879,900). Slipp is considered to disclose

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the claimed invention, as rejected above, except for the claimed cutout area on a side for facilitating lifting by a user. Fox, another apparatus for storing an article, is considered to disclose a cutout area on a side for facilitating lifting by a user at column 3 lines 36-50 wherein the disclosed cutout is considered to meet the claimed cutout function because both allow a cutout region shaped to facilitate lifting. It would have been obvious to one skilled in the art to combine the teachings of Slipp with the cutout area on a side for facilitating lifting by a user, considered inherently disclosed in Fox, for the purpose of providing a lifting an article.

Double Patenting

Claims 2, 4-7, 9, 11, 18-19, and 32-34 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5-15 of copending Application No. 09/902,965. Although the conflicting claims are not identical, they are not patentably distinct from each other because the presently claimed first and second operative positions along a single axis of rotation is considered an obvious variation to the copending claimed feature of rotation axis with opposed journal holes since both describe substantially the same function means in substantially the same way with substantially the same result such that it would have been obvious to one skilled in the art to recite equivalent language in different reissue patent applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(10) Response to Argument

As a preliminary matter, rejections made under 35 USC 112, first and second paragraph are withdrawn except for the second paragraph rejection of claim 2. It was discussed in an appeals conference, that although precise claim language is not identically matched to the specification discussion, one skilled in the would be reasonably conveyed that the inventors had possession of the claimed invention and that the claim language is not indefinite. The double patenting rejection has not been appealed.

indefiniteness (appellant issue 4 in part)

Description of examples or preferences is properly set forth in the specification rather than the claims. If stated in the claims, examples and preferences may lead to confusion over the intended scope of a claim. In those instances where it is not clear whether the claimed narrower range is a limitation, a rejection under 35 U.S.C. 112, second paragraph should be made. The examiner should analyze whether the metes and bounds of the claim are clearly set forth. MPEP 2173.05 (d).

Appellants assert that claim 2 recites "such as" in a manner that is not indefinite citing MPEP 2173.02. However in an earlier action it was noted that appellants' recitation is construed to be indefinite because it is a broad recitation followed by a narrower recitation. Because of the broad recitation followed by a narrower recitation, it is unclear whether the limitations following the "such as" recitation are part of the claimed invention. Examination of appellants' recited claim limitation is based on "material such as rock wool or asbestos" *Ex parte Hall*, 83 USPQ 38 (Bd.App. 1949)

wherein the claimed “underlying surface” corresponds to “material” and “a counter top” corresponds to “rock wool or asbestos” based on that decision. Deletion of “such as” would improve the clarity and language of the claimed invention, but current Office practice guides examination such that appellants’ recitation is indefinite.

anticipation

(appellant issue 8)

Appellants assert that claim 2 is not anticipated by drying rack Slipp because the recited claim limitation “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus” is not a prima facie prior art reference for anticipation. Current Office practice guides examination such that claims are reasonably and broadly construed in light of the specification.

Focusing on appellants’ recitation “adjacent,” it can be seen in Slipp that the entire peg c or d, is positioned adjacent an upper surface in either figure 3 or 4. Looking to appellants specification, the claim recitation “adjacent” is mentioned twice in the first full paragraph of column 4. Nothing is specified that the entire peg must be positioned adjacent an upper face, such that a portion above an upper face is precluded from being adjacent as claimed and argued by appellants. “Adjacent” is broadly and reasonably construed from the specification such that if the claimed peg is next to the specified upper surface, then the entire peg is adjacent the upper surface. Slipp shows an entire peg adjacent an upper surface and the statement of intended use (for storage and packaging of said apparatus) is disclosed in the folding drying rack of Slipp since it

is collapsible (first page line 17) which would allow storage and packaging to those skilled in the art.

Appellants also assert that claim 2 is not anticipated by Slipp because the recited claim limitation “wherein said pegs are mounted to said tray in such a manner that no standing water may collect at a point where a peg is mounted, thereby minimizing potential for mold and bacterial growth” is not inherently taught by that reference. As appellants acknowledge in the appeal brief, Slipp teaches a trough. A trough, to one skilled in the art, is an area where water collects that is drained away to an undesired area. In this application, water is desired to be drained away from the peg. In prior art reference Slipp, the trough is designed such that water is desired to be drained away from the peg, because it can be emptied by a user. Also to those skilled in the art, a trough collecting water minimizes potential for mold and bacterial growth because a drying area would remain dry. Like the claimed invention, Slipp is a drying rack. The structure and purpose of the claimed invention is anticipated by Slipp.

The anticipatory rejection of claim 2 is considered proper and suggested it be affirmed.

(appellant issue 9)

Appellants assert that claim 4 is not anticipated by drying rack Slipp because the recited claim limitation “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus” is not a prima facie prior art reference for anticipation. The same answer to appellants’ brief under issue 8 above applies to this appellant issue 9 and need not be repeated.

Appellants also assert that claim 4 is not anticipated by Slipp because the recited claim limitation "means for imparting lateral stability to said pegs, further deterring any motion other than about a single axis of rotation" is not expressly taught by that reference. As appellants acknowledge in the appeal brief, Slipp teaches two folding side frames hinged at the side of a trough and horizontal bars fitting snugly within the trough to the ends which is pivoted. Appellants acknowledge Slipp teaching expressly anticipates the claimed means for imparting lateral stability because the disclosed hinged sides and snug fit and pivot end imparts lateral stability, otherwise the illustrated and disclosed drying rack of Slipp would not be enabled to those skilled in the art.

Furthermore, appellants argue from the specification that lateral stability is achieved by use of a common axle for further deterring any motion other than about a single axis of rotation (first paragraph of column 4). The claimed means for imparting lateral stability is reasonably and broadly construed from this specification discussion to allow the claimed pegs to pivot either up or down by not side to side. It can be seen in figures 3 and 4 of Slipp that pegs c or d pivot up and down, while pivot means f imparts lateral stability by preventing side to side, which can be seen from figures 1 and 2, motion achieved by a common axle which further deters any motion other than about a single axis of rotation. To those skilled in the art lateral stability is achieved by Slipp as claimed by appellants.

Appellants argue that patentability of dependent claims 5-7, based on arguments of patentability of claim 4. Since claim 4 is considered anticipated by Slipp, so are claims 5-7.

The anticipatory rejection of claims 4-7 are considered proper and suggested it be affirmed.

(appellant issue 10)

Appellants assert that claim 9 is not anticipated by drying rack Slipp because the recited claim limitation "said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus" is not a prima facie prior art reference for anticipation. The same answer to appellants' brief under issue 8 above applies to this appellant issue 10 and need not be repeated.

Appellants also assert that claim 9 is not anticipated by Slipp because the recited claim limitation "disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect" is not expressly taught by that reference. Appellants identify disk holding system from the specification such that the disclosed pegs of Slipp should not be used to anticipate that claimed feature. However it should be recognized that Slipp teaches top surfaces of receptacle **a** or bars **e** can be reasonably and broadly construed to be disk holding means as claimed since both disclosed features are connect to an upper surface of a tray and can be used for holding baby bottle disks in a location that is isolated from areas of the tray which may collect liquid.

Appellants did not argue that patentability of dependent claim 10, therefore claim 10 is considered anticipated by Slipp, as rejected above.

The anticipatory rejection of claims 9-10 are considered proper and suggested it be affirmed.

(appellant issue 11)

Appellants assert that claim 22 is not anticipated by drying rack Slipp because the recited claim limitation "said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus" is not a prima facie prior art reference for anticipation. The same answer to appellants' brief under issue 8 above applies to this appellant issue 11 and need not be repeated.

Appellants also assert that claim 22 is not anticipated by Slipp because the recited claim limitation "frictional means connected to said pegs for frictionally engaging said upper portion of said tray wherein said pegs are moved between said first storage position and said second operative position" is not taught by that reference. Appellants refer to this reissue application, parent patented discussion in column 4 lines 29-38 of their US 6,038,784 patent for frictional means support. In that discussion, appellants specify a first storage position and second operative position being changed by a user push in a desired direction. Looking to primary reference Slipp figure 4, drying rack is illustrated in a first storage position and figure 3 is illustrated in a second operative position. Second page lines 17-20 disclose pins (or pegs) will remain in a vertical position until collapsed by hand (or user). To those skilled in the art of gravity and forces to overcome gravity, it should be recognized that the claimed second operative position is maintained by friction because a user must push in a desired direction for a first storage position which is inherently anticipated by Slipp because friction causes pins or pegs to remain in a second operative position until the hand of a user overcomes friction to collapse the pins or pegs toward a first storage position.

Appellants further argue frictional means for frictionally engaging an upper portion of a tray. The teachings of Slipp are subject to the same frictional means and gravity as claimed. The frictional means apply to an upper portion, lower portion or any portion claimed or identified by appellants. The Office broadly and reasonably construes the claim recitation "for frictionally engaging" (emphasis added) as a statement of intended use which is not limited to only an upper face as argued, but all areas of the claimed invention as disclosed by the prior art.

Appellants argue that patentability of dependent claims 23-26 and 29, based on arguments of patentability of claim 22. Since claim 22 is considered anticipated by Slipp, so are claims 23-26 and 29.

The anticipatory rejection of claims 22-26 and 29 are considered proper and suggested it be affirmed.

(appellant issue 12)

Appellants assert that claim 19 is not clearly anticipated by tray Son because it is not seen as a prima facie showing of each of the claimed elements. The face of that reference shows a tray 5 & 6, a bottle support means 14, 19, 20, or 16 for supporting hypodermic needles and the like which include baby bottle support since the structure would support a baby bottle, and disk holding means 19 or 20 connected to an upper tray surface intended for holding disks such as those used in baby bottles in a safe manner and convenient location, as claimed. Appellants argue that the claimed structure is limited to baby bottles, but reasonable and broad claim construction allows the face of primary reference Son to also allow application to baby bottles.

Appellants also assert that claim 19 to their US 6,038,784 patent discussion with respect to the claimed disk holding means. Current Office practice does not allow narrowing of claim language by incorporating specification discussion or more briefly, the name of the game is the claim. If the claim can be rejected by the prior art, then it should be amended or argued that the prior art does not disclose a claimed feature. In this application, it is considered that every claimed element is clearly shown on the face of the Son reference.

Appellants argue that patentability of dependent claims 20-21, based on arguments of patentability of claim 19. Since claim 19 is considered anticipated by Son, so are claims 20-21.

The anticipatory rejection of claims 19-21 are considered proper and suggested it be affirmed.

obviousness

(appellant issue 13)

Appellants rely on current Office procedure in asserting non-obviousness of claim 10. Using appellants quoted section of MPEP 2104.01(a), Slipp is analogous to the independently claimed invention because both are drying devices while Son is analogous to the dependently claimed invention because it is reasonably pertinent to the particular problem concerned by the inventor appellants in that a need exists for disk holding means. Logically the teachings of Son reasonably obviate the claimed disk holding means because it is relevant to the particular problem face by the inventor appellants. Appellants further argue that although Son is not pertinent to baby products,

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that reference is not used to teach baby products, but rather disk holding means for trays. The teaching or suggestion of this asserted non-analogous art is that a means is needed for holding a disk. The disclosed notch has the same structure as the claimed disk holding means and therefore is considered proper for appellants intended use because both would be used for substantially the same purpose in substantially the same way for substantially the same result. Again further arguments limiting the claimed disk holding means to specification discussion is not considered to overcome the obviousness rejection, because the claim is what defines patentable subject matter. Also, the argued plurality of disk receiving slots can be seen on the face of Son, because figure 1 of that reference shows more than one slot **19** on the tray.

The obviousness rejection of claim 10 is considered proper and suggested it be affirmed.

(appellant issue 14)

Appellants assert non-obviousness of claim 11 first because of the recited "entire peg" limitation and second because the secondary reference does not disclosed all of the independently claimed elements.

First, appellants assert that claim 11 is patentable over drying rack Slipp because the recited claim limitation "said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus" is not a prima facie prior art reference for anticipation. The same answer to appellants' brief under issue 8 above applies to this appellant issue 14 and need not be repeated.

Second, appellants argue features that were not rejected in the obviousness rejection above. Primary reference Slipp in view of secondary reference Folini is considered to obviate the claimed invention because of the disclosed plurality of ring support members **34** provided with an axial slot **32** for ring shaped bottle lid **24** portion of a baby bottle. Examination suggested portions of Folini which obviate the claimed invention, but it is recommended reviewing the reference as a whole when viewed in light of the Slipp teachings.

The obviousness rejection of claim 11 is considered proper and suggested it be affirmed.

(appellant issue 15)

Appellants assert non-obviousness of claims 12-17 first because of the recited "entire peg" limitation and second because the secondary reference does not disclosed all of the independently claimed elements.

First, appellants assert that claim 11 is patentable over drying rack Slipp because the recited claim limitation "said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus" is not a prima facie prior art reference for anticipation. The same answer to appellants' brief under issue 8 above applies to this appellant issue 15 and need not be repeated.

Second, appellants argue features that were not rejected in the obviousness rejection above. Primary reference Slipp in view of secondary reference Folini in further view of tertiary reference Chang is considered to obviate the claimed invention for the reasons set forth above in the third obviousness rejection.

Appellants argue that patentability of dependent claims 12-17, based on arguments of patentability of claim 11. Since claim 11 is considered not patentable over Slipp in view of Folini, so may claims 12-17 be considered unpatentable over Slipp in view of Folini in further view of Chang.

The obviousness rejection of claims 12-17 are considered proper and suggested it be affirmed.

(appellant issue 16)

Appellants assert non-obviousness of claims 27-28 first because of the recited “entire peg” and “frictional means” limitations and second because the secondary reference does not disclosed all of the independently claimed elements.

First, appellants assert that claim 22 is patentable over drying rack Slipp because the recited claim limitation “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus” is not a prima facie prior art reference for anticipation. The same answer to appellants’ “entire peg” brief under appellant issue 8 above applies to this appellant issue 16 and need not be repeated. Likewise, the same answer to appellants’ “frictional means” brief under appellant issue 11 above applies to this appellant issue 16 and need not be repeated. Appellants arguments repeated in this issue 16 with respect to secondary reference Folini are considered fully addressed under issue 14 and not addressed here.

Second, appellants argue features that were not rejected in the obviousness rejection above. Primary reference Slipp in view of secondary reference Folini in further

view of tertiary reference Chang is considered to obviate the claimed invention for the reasons set forth above in the third obviousness rejection.

Appellants argue that patentability of dependent claims 27-28, based on arguments of patentability of claim 22. Since claim 22 is considered unpatentable over Slipp, claims 27-28 can be obviated with respect to the “entire peg” and “frictional means” elements.

The obviousness rejection of claims 27-28 are considered proper and suggested it be affirmed.

(appellant issue 17)

Appellants assert non-obviousness of claims 18 and 21 first because of the recited “entire peg” limitation and second because the secondary reference does not disclosed all of the independently claimed elements.

First, appellants assert that claim 18 is patentable over drying rack Slipp because the recited claim limitation “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus” is not a prima facie prior art reference for anticipation. The same answer to appellants’ “entire peg” brief under appellant issue 8 above applies to this appellant issue 17 and need not be repeated.

Second, appellants argue features that were not rejected in the obviousness rejection above. Primary reference Slipp in view of secondary reference Fox is considered to obviate the claimed invention for the reasons set forth above in the fourth obviousness rejection.

Appellants argue that patentability of dependent claim 21, based on arguments of patentability of claim 18. Since claim 18 is considered unpatentable over Slipp, claim 21 can be obviated with respect to the “entire peg” element.

The obviousness rejection of claim 21 is considered proper and suggested it be affirmed.

(appellant issues 18 & 19)

Appellants assert non-obviousness of claims 30-34 first because of the recited “entire peg” and “frictional means” limitations and second because the secondary reference does not disclosed all of the independently claimed elements.

First, appellants assert that claim 22 is patentable over drying rack Slipp because the recited claim limitation “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus” is not a prima facie prior art reference for anticipation. The same answer to appellants’ “entire peg” brief under appellant issue 8 above applies to this appellant issues 19 & 19 and need not be repeated. Likewise, the same answer to appellants’ “frictional means” brief under appellant issue 11 above applies to this appellant issues 19 & 19 and need not be repeated.

Second, appellants argue features that were rejected in the obviousness rejection above, specifically the claimed “cutout area.” Primary reference Slipp in view of secondary reference Fox is considered to obviate the claimed invention for the reasons set forth above in the fourth obviousness rejection. Appellants assertion of patentability without distinguishing the claimed invention over the prior art is not considered to overcome the outstanding rejection.

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Appellants argue that patentability of dependent claims 30-31 and 33-34, based on arguments of patentability of claim 22 and 32 respectively. Since claim 22 is considered unpatentable over Slipp and claim 32 is considered unpatentable over Slipp in view of Fox, claims 30-31 and 33-34 can be obviated with respect to the "entire peg" or "frictional means" elements.

The obviousness rejection of claims 30-34 is considered proper and suggested it be affirmed.


double patenting

Since appellants have not appealed the double patenting rejection, it is recommended that the double patenting rejection above be affirmed.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Stephen Gravini



Conferees:

Ehud Gartenberg SPE  (initials)

Kenneth Rinehart  (initials)